

GRANT AGREEMENT
State of California – Sierra Nevada Conservancy

Grantee Name: _____

Project Title: _____

Application Number: **SNC 07XXXX**

Authority: **Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006**

Program: **Sierra Nevada Conservancy Proposition 84 Grants Program, Public Resources Code Section 75050(j)**

PROJECT DESCRIPTION

Insert Brief Description Here (Exhibits “A” and “B” to contain details – “deliverables”)

A detailed Project Scope and deliverables, project schedule and Project Budget Categories are described and attached hereto as Exhibit “A”. Detailed Project Reporting Requirements are described and attached hereto as Exhibit “B”.

TERMS AND CONDITIONS OF GRANT

Special Provisions

The Grant provided under this Agreement is conditioned on the Grantee’s compliance with the following Special Provisions:

- A. At least 10 days before the scheduled date for close of escrow, Grantee shall submit to the Sierra Nevada Conservancy (“SNC”), for review and approval for consistency with this Agreement, all of the following documents pertaining to the Grantee’s acquisition of real property: preliminary title reports; agreements for purchase and sale; escrow instructions, proposed deed or instrument(s) of conveyance; any instruments to be executed by Grantee and recorded at close of escrow, including but not limited to any instrument(s) which would create a covenant, obligation, or restriction affecting the property to be acquired. Such review and approval by the SNC shall be carried out in a timely fashion and shall not be unreasonably withheld.
- B. *Insert if Grantee is a nonprofit.* The deed or instrument, by which the Grantee acquires title to the Property to be acquired pursuant to this Agreement, shall provide that the conveyance is subject to:
 - i. a remainder interest vested in the State of California, which, in the event that Grantee ceases to exist as a nonprofit corporation, shall provide that all of Grantee’s right, title and interest in and to the Property shall immediately vest in the State, or in such other public or private entity which the State, in its discretion, has identified as appropriate to accept the Property in lieu of the State; and

- ii. a power of termination pursuant to Civil Code section 885.010, which may be exercised by the State, in the event of a violation of the purposes of the Grant through breach of a material term or condition of this Agreement by Grantee or its successor-in-interest. Upon the recordation of a notice of the State's exercise of the power of termination, full title to the interest in real property identified in the notice shall immediately vest in the State, or in another public agency or a nonprofit organization designated by the SNC, to which the State conveys or has conveyed its interest.

C. Other special provisions if needed.

General Provisions

A. Definitions

1. The term "Act" means The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84).
2. The term "Acquisition" means the acquisition of the fee title or any other interest in real property, including an easement or leasehold interest, or of water rights, from a willing seller.
3. The term "Agreement" means this Grant Agreement.
4. The term "Application" means the Grant application, its required attachments, and any other applicable materials supplied by the Applicant to the Sierra Nevada Conservancy prior to award of the Grant.
5. The term "Application Guidelines" means the Sierra Nevada Conservancy Proposition 84 Grants Guidelines.
6. The term "Fair Market Value" means the current or recent value of the Property as determined by a professional appraisal that has been reviewed and approved by the SNC or its designee.
7. The terms "Grant" and "Grant Funds" mean the money provided by the Sierra Nevada Conservancy to the Grantee under this Agreement.
8. The terms "Grantee" and "Applicant" mean an applicant who has a signed agreement to receive Grant Funds from the Sierra Nevada Conservancy.
9. The term "Payment Request Form" means the Sierra Nevada Conservancy's "Request for Payment Proposition 84 State Grant Program" Form.
10. The term "Project" means the activity described in Exhibit "A" to be accomplished with the use of Grant Funds.
11. The term "Project Budget" means the cost estimate approved by the Sierra Nevada Conservancy and included in Exhibit "A" to this Agreement.

12. The term "Project Scope" means the goals and objectives to be accomplished by the Project.
13. The term "Property" means the real property, or interests therein, to be acquired with funding provided under this Agreement.
14. The term "SNC" means the Sierra Nevada Conservancy, an agency of the State of California.
15. The term "State" means the State of California.

B. Guidelines and Application – Incorporation by Reference

The Grant Guidelines, the Application, and any subsequent changes or additions to the Application approved in writing by the SNC are hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

C. Project Implementation

1. The SNC hereby grants to the Grantee a sum of money not to exceed the amount stated on the signature page of this agreement, on condition that the Grant Funds be expended for the eligible costs and purposes of the Project as described in Exhibit "A" of this Agreement and pursuant to all other terms and conditions set forth herein.
2. Grantee shall furnish any and all additional funds that may be necessary to complete the Project.
3. Property acquired under this Agreement shall be acquired from a willing seller or sellers, at a price not to exceed fair market value as determined pursuant to an Appraisal report or reports meeting the specifications in Exhibit "B" and approved by the Conservancy.
4. If Grantee is a public agency, Grantee agrees to comply with all applicable federal, state and local laws or ordinances that apply to relocation of persons occupying the property to be acquired.
5. Grantee shall complete the Project within the Project Performance Period set forth on the signature page, unless an extension has been granted by the SNC in writing, pursuant to the Terms and Conditions of this Agreement. Any requests for extensions should be made by the Grantee at least sixty (60) days prior to the end of the Project Performance Period. In no event will a Project Performance Period be extended beyond April 1, 2010.
6. When awarding a contract for a "public works project" funded under this Act, the awarding body must comply with applicable State laws concerning the payment of prevailing wages (Labor Code section 1771.5; Public Resources Code section 75075). Before soliciting bids or entering into contracts for any physical work to be performed on land or on improvements to land, or for any inspections or surveys in preparation for such work, the Grantee shall determine whether the activities to be contracted for include or constitute a "public works project" to which the said laws apply.

7. Grantee certifies that the Project does and will continue to comply with all current laws and regulations which apply to the Project, including, but not limited to, legal requirements for construction contracts and workers' compensation, building codes, environmental laws (including but not limited to the California Environmental Quality Act), health and safety codes, and disabled access laws
8. Grantee certifies, pursuant to Government Code section 16645 et seq., that (1) no State funds disbursed to Grantee under this agreement will be used to assist, promote, or deter union organizing; and (2) if Grantee incurs any costs for any such purpose(s), Grantee will maintain records sufficient, under Government Code section 16645.2 to show that no reimbursement from State funds has been sought for these costs, and Grantee will provide these records to the California Attorney General upon request.
9. Prior to commencing any work under this agreement, Grantee shall obtain the SNC's written approval of any change or deviation from the original Project Scope set forth in Exhibit "A" and the Application. In order to be approved, changes in the Project or Project Scope must serve the need and purpose set forth in the original Application, and must comply with all current laws and regulations and all other requirements of this Agreement.
10. All actions and approvals, required to be taken by the SNC under this Agreement, may be taken by its Executive Officer or his/her designee.

D. Use of Property Acquired under the Grant

1. Except as otherwise specified in the "Special Provisions" above, and as provided below, the Grantee, or its successor-in-interest shall operate and maintain the Property acquired under this Agreement, in perpetuity, for the purposes for which the Grant was made. The Grantee and its successors may assign the responsibility to operate and maintain the Property only with the written approval of the SNC, and may be excused from the obligation to operate and maintain the Property only upon the written approval of the SNC for good cause. "Good cause" includes, but is not limited to, natural disasters that destroy improvements on the Property which are necessary and fundamental to the purposes of the Grant and the Project, and which would be impracticable to rebuild.
2. The Property (including any portion of it or interest in it) may not be sold or transferred without the written approval of the SNC, provided that: (a) such approval shall not be unreasonably withheld as long as the Grantee and the transferee provide reasonable assurance that the Property will continue to be operated and maintained for the purposes for which the Grant was awarded; and (b) any such approval shall be accompanied by an agreement between the SNC and the transferee, sufficient to protect the public interest in the Property.
3. Notwithstanding paragraph 2 above, if the Grantee is a public agency, nothing in this Agreement shall prevent the Grantee from transferring the Property to another public agency which has expressly assumed all of the Grantee's obligations under this Agreement.

4. If, as determined by SNC in its sole discretion, the Grantee or its successor changes the use of the Property to a use not permitted by this Agreement, or sells or disposes of the Property in violation of the foregoing provisions, or otherwise violates the purpose of the Grant through breach of a material term or condition thereof, the SNC may, by notice to Grantee, either:
 - (a) Exercise its power of termination in the Property, as provided in Special Provision B (ii) above, causing all of Grantee's right, title and interest in the Property, upon recordation of the State's notice to Grantee, immediately to vest in the State, or in another public agency or nonprofit organization designated by the SNC, to which the State conveys or has conveyed its interest; or
 - (b) Require the Grantee to repay the SNC one of the following amounts, to be determined by the SNC in its discretion: (i) the full amount of the Grant, or (ii) in the case of a sale or disposition of the Property (or a portion of or interest in the Property) in violation of the foregoing provisions, the full proceeds of the sale or other disposition.
5. The Grantee shall not use, or allow the use of, any portion of the Property for mitigation, or satisfaction of a condition imposed by a regulatory agency or body, without the written permission of the SNC.

The Grantee shall not use or allow the use of any portion of the Property as security for any debt without the prior written approval of the SNC.

E. Work Products

Upon completion of the Project, copies of all written, visual, electronic, and other materials or work products created under this Project, except for those which are used up or consumed in carrying out the Project, shall be provided upon request. The SNC shall have the full right to use said products in any manner it sees fit, free of any claim for additional compensation on the part of the Grantee, or its vendors, or subcontractors.

F. Publicity and Acknowledgment

Unless otherwise agreed upon between the parties, the Grantee agrees that any publications, studies, or reports which are made possible by or derived in whole or in part from this Project, and any news articles, brochures, seminars, or other promotional materials or media through which it publicizes the Project will acknowledge the SNC's support in the following manner: "Funding for this project has been provided by the Sierra Nevada Conservancy, an agency of the State of California."

G. Project Costs

1. Grantee agrees to use all Grant Funds provided by the SNC under the terms of this Agreement solely for the Project herein described.
2. Grant Funds provided to Grantee under this Agreement will be disbursed for eligible costs, on a reimbursement basis, except as provided in (3) below.

3. Advance payments may be authorized at the discretion of the SNC if warranted by compelling need.
 - a. Advance payments of funds to be used for purchase of the Property will be made solely by direct payment into the purchase escrow. To request an advance, the Grantee shall submit a letter stating the need for and the amount of the requested advance, signed by an authorized representative of the Grantee. The request shall be accompanied by the items listed in paragraph 8 below.
 - b. Advance payments for funds to be used for other costs associated with acquiring the Property may be requested for up to fifty percent (50%) of the estimated associated acquisition costs. To request an advance, the Grantee shall submit a letter stating the need for and the amount of the requested advance, signed by an authorized representative of the Grantee. Upon receipt of an advance request, the SNC may contact the Grantee to discuss the request and evaluate repayment options. For approved advances, the SNC will provide a letter that specifies the amount of the advance being authorized and the terms for repayment. In no case shall an advance be authorized for a State agency or a Joint Powers Agency created by an agreement to which the State is a party.
4. If Grant Funds are advanced, other than by deposit of grant funds directly into escrow (see paragraph 8 below), the Grantee shall place these Funds in a separate interest bearing account, to be set up and identified prior to the advance. Interest earned on Grant Funds shall be used for the Project, as approved by the SNC. Through an adjustment of the final invoice, the grant will be reduced by a corresponding amount. Any overpayment of Grant Funds in excess of final Project costs shall be returned to the SNC within sixty (60) days of completion of the Project or by the end of the Project Performance Period as shown on the signature page of this Agreement, whichever is earlier.
5. Grantee shall use any income earned by the Grantee from use or implementation of the Project or the Project site to further the general purposes of the Project, or, if approved by the SNC, for other purposes consistent with the intent of the Act and within the SNC's jurisdiction, as defined in Public Resources Code section 33302(f).
6. Payment Process and Documentation:
 - a. All payment requests must be submitted using a completed Payment Request Form, accompanied by an itemized list of all expenditures and supporting documentation that clearly identifies the expenditure(s) as it relates to the Project Budget in Exhibit "A". Payment requests may not be submitted more often than monthly.
 - b. In addition to the items specified in paragraph 6a above, requests for payment of Grant Funds as reimbursement for expenses incurred by Grantee in acquiring the Property shall include all of the following:
 - i. Buyer's closing statement;

- ii. Copies of the recorded deed or deeds in favor of Grantee, together with any instruments that were recorded at close of escrow by Grantee, or that create any covenant, obligation, or restriction affecting the Property; and
 - iii. Policy of title insurance.
 - c. Ten percent (10%) of each request for reimbursement will be retained and issued as a final payment upon completion of the Project unless SNC agrees, in writing, to a different withholding rate.
 - d. Any payment request that is submitted without the required itemization and documentation will not be authorized for payment. If the payment request package is incomplete, inadequate or inaccurate, the SNC will dispute the invoice for reasonable cause and hold all or a portion of the payment request until all required information is received or corrected. Any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment or other breach of the agreement between Grantee and the contractor, are the responsibility of the Grantee and are not reimbursable under this Agreement.
 - e. e. Final payment of remaining Grant Funds, including amounts withheld from previous payments, shall be paid up to the total amount of the Grant Funds or the actual Project cost, whichever is less, upon: completion of the Project; the SNC's receipt and approval of the final report and final payment request from the Grantee, in form and content satisfactory to the SNC; and the satisfactory completion of a site inspection or other review by SNC.
7. Final payment is contingent upon SNC verification that the Project, as implemented, is consistent with the Project Scope as described in Exhibit "A," together with any SNC-approved amendment(s). Except for Grant Funds deposited by SNC directly into escrow, the SNC will disburse the Grant Funds to the Grantee for the SNC-approved purchase price, and the related costs of acquisition approved by the SNC, within sixty (60) days following close of escrow, or upon Grantee's submittal of the items listed in paragraphs 6a and 6b, whichever is later; but in any event such payments shall not exceed the amount set forth on the signature page of this Agreement.
8. Requests for payment of Grant Funds into escrow must be accompanied by a letter on the Grantee's letterhead, requesting that funds be deposited directly into escrow on behalf of the Grantee. The request shall contain all of the following:
- a. Name and address of Grantee;
 - b. Number of this Agreement;
 - c. Dollar amount of disbursement requested;
 - d. Name, address and telephone number of the title company or escrow holder, and the escrow account number to which the Grant Funds will be disbursed;

- e. A statement by Grantee that all funds (other than the Grant Funds to be provided under this Agreement) needed for completion of Acquisition of the Property have been secured and have been or will be deposited to escrow at or about the same date as the requested Grant Funds;
 - f. If not already submitted to the SNC for its approval: copies of the documents enumerated in Special Condition "C" above; and
 - g. Anticipated close of escrow date.
9. Grant Funds under this Agreement must be expended within the time frame of the Project Performance Period as indicated in this Agreement.
10. Except as otherwise provided herein, the Grantee shall expend Grant Funds in the manner described in the Exhibit "A" approved by the SNC. The total dollars of a category in the Project Budget may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the SNC. The Grantee shall include documentation in the final project report of any such reallocations made, and shall identify both the item(s) being increased and those being decreased. For the purposes of reallocation, any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a category must be approved in advance in writing by the SNC.

H. Project Review, Inspection and Documentation

- 1. Grantee shall promptly submit written Project reports and/or photographs upon request by the SNC or as specified in this agreement.
- 2. Grantee shall provide access to the SNC upon twenty-four (24) hours notice to evaluate work completed or being performed pursuant to this Agreement, including work by contractors and subcontractors, in accordance with the approved Project Scope. Grantee shall require all contractors and subcontractors, in such event, to provide all reasonable facilities and assistance for the safety and convenience of the SNC's representative(s) in making such inspections.
- 3. Unless otherwise authorized by the SNC in writing, Grantee shall submit all documentation of Project completion, including but not limited to, a final payment request within sixty (60) days of Project completion, but in no event any later than April 1, 2010.

I. Advance Termination

- 1. Prior to the completion of the Project, either party may terminate this Agreement by providing the other party with thirty (30) days' written notice of termination.
- 2. If the SNC terminates this Agreement prior to the end of the Project Performance Period, the Grantee shall take all reasonable measures to prevent further costs to the SNC hereunder. The SNC shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee under this Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.

3. If the Grantee fails to complete the acquisition of the Property as described in Exhibit "A," in accordance with the other terms of this Agreement, the Grantee shall be liable for immediate repayment to the SNC of all amounts disbursed by the SNC under this Agreement, plus accrued interest. Interest shall be calculated at the rate(s) earned by the State's Pooled Money Investment Account from the date of disbursement to the date of repayment, compounded monthly. In the case of any such failure occurring during the Project Performance Period set forth on the signature page of this Agreement, all obligations of SNC and the State hereunder shall be suspended until the failure is corrected; and if the Grantee does not correct the failure within thirty (30) days following notice by the SNC to do so, the failure shall constitute an automatic termination of this Agreement for cause. The SNC may, in its sole discretion, consider extenuating circumstances and may waive, in whole or in part, any provision of this paragraph, subject to the requirements of the Act and other applicable laws. This paragraph shall not be deemed to limit any other remedies the SNC may have for breach of this Agreement by Grantee.

J. Financial Records

1. The Grantee shall establish an official file for the Project. The file shall contain adequate documentation of all actions that are taken with respect to the Project.
2. The Grantee shall keep separate and complete accounting records for receipt, deposit, and payment of all Project funds, including interest. All funds received by the Grantee shall be deposited in separate fund accounts that identify the funds and clearly show the manner of their disposition.
3. The Grantee agrees that adequate supporting documentation shall be maintained in sufficient detail to provide an audit trail which will permit tracing transactions from support documentation to the accounting records to the financial reports and billings.
4. The Grantee shall maintain books, records, documents, and other evidence sufficient to reflect properly the amount, receipt, and disposition of all Project funds, including State funds, interest earned, and any matching funds by the Grantee and the total cost of the Project. The maintenance requirements extend to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all awards, applications, and required financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals who are compensated or reimbursed under the grant, whether they are employed full-time or part-time. Time and effort reports are also required for consultants and contractors. Adequate supporting documentation shall be maintained by consultants and contractors in sufficient detail to provide an audit trail which will permit tracing transactions from the invoices to the financial statement, to the accounting records, and to the supporting documentation.
5. Grantee shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the SNC.

K. Audit Requirements

1. The SNC reserves the right to call for a program audit or a financial audit at any time between the execution of this Agreement and the Completion Date or, in case of early termination, the termination of the Project. Within 10 working days of a request by the SNC, Grantee shall furnish, at its own expense, legible copies of all materials deemed pertinent to the request. At any time, the SNC may disallow all or part of the cost of any activity or action which it determines to be out of compliance with the terms and conditions of this Agreement.
2. In addition, this Agreement, the Project, and all expenditures hereunder shall remain subject to examination and audit by the State of California, including but not limited to the Secretary of the Resources Agency, the Department of Finance, and the State Auditor, for a period of three (3) years after the final payment under this Agreement, or after the completion of the final audit by the SNC, whichever is later. During said period, all of Grantee's books and records pertaining to the Project shall be preserved, and shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the State of California.

L. Assignment

Except as expressly provided by written agreement between the SNC and the Grantee, this Agreement is not assignable by the Grantee either in whole or in part.

M. No Agency Agreement

In carrying out this Agreement, the Grantee and its agents and employees shall be deemed to be acting in an independent capacity with respect to the SNC, and not as the officers, employees, or agents of the SNC or the State.

N. Liability

1. The Grantee shall be responsible for, indemnify and save harmless the SNC and the State of California, and their officers, agents, and employees, from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to this Agreement, except as, and to the extent, arising out of the active negligence or intentional wrongdoing of the SNC and the State of California and their officer(s), agent(s) or employee(s). The duty of the Grantee to indemnify and save harmless includes the duty to defend as set forth in Civil Code section 2778.
2. The parties expressly acknowledge that this Agreement is an agreement for the subvention of public funds from the SNC to the Grantee, and is not an "agreement" as the term is defined in Government Code section 895 or a "construction contract" under Civil Code sections 2782 or 2783. Accordingly, it is acknowledged that Grantee does not, in matters arising under this Agreement, have any right to contribution and indemnity from the SNC and/or the State of California arising under Government Code sections 895.2 and 895.6.
3. Grantee waives any and all rights to any express or implied indemnity or right of contribution from the SNC and its members, the State, its and their officers, agents and employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement, except such liability as results from

the active negligence or the intentional wrongdoing of the SNC, or its member(s), officer(s), agent(s), or employee(s), and in the case of joint negligence, is in direct proportion to the SNC's share of fault.

O. Nondiscrimination

The Grantee shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.

P. Severability

If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

Q. Waiver

No term or provision hereof will be considered waived by either party, and no breach is excused or consented to by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No express or implied consent by either party to, waiver of, or failure of a party to enforce its rights with respect to a breach by the other party shall constitute consent to or, waiver of any subsequent or other breach by the other party.

Q. Time of the Essence

Time is of the essence with respect to the Completion Date set forth in Exhibit "A." With respect to all other dates set forth therein, Grantee shall use best efforts to accomplish the tasks by the specified dates.

R. Amendment

This Agreement may be amended by mutual agreement in writing between Grantee and SNC. Any request by the Grantee for amendments must be in writing stating the amendment request and reason for the request. The Grantee shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.

S. Entire Agreement

This Agreement, and the attached exhibit, constitute the entire Agreement between the parties hereto relating to the Project and may not be modified except by an instrument in writing signed by the parties hereto.